

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
TEXACO, INC.,)
)
Appellant,)
)
v.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent.)
)

PCHB No. 79-2

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal from the imposition of a \$5,000.00 civil penalty for allegedly discharging fuel into public ground water of the state, came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, Chris Smith, and David Akana (presiding) at a formal hearing in Tacoma on April 9, 1979.

Appellant was represented by its attorney, Peter S. Reis; respondent was represented by Laura E. Eckert, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant operates and maintains an oil storage facility on
4 Harbor Island. The facility, which contains several large oil tanks,
5 is rectangular in shape, surrounded by high fire walls, and was
6 constructed upon non-homogeneous dredge spoils. The floor of the facility
7 is exposed dirt and spoils, and is not sealed to contain water or oil
8 products. Beneath the ground surface are veins of clay material scattered
9 throughout the facility. The percolation rate of water or oil products
10 through the exposed ground could vary according to the nature of the
11 material that happened to be present in the ground.

12 II

13 On May 17, 1978 at about 6:00 p.m., while attempting to remove an
14 accumulation of water from a tank containing "AV jet A" fuel,
15 appellant's employee discharged about 20,000 gallons of fuel on the
16 exposed facility ground. The oil flowed in a northeasterly direction
17 and covered about one-third of the enclosed area. Appellant recovered
18 about 9,000 gallons of liquid; approximately 1,500 gallons of fuel
19 evaporated; the remaining fuel percolated into the ground. The
20 percolating fuel penetrated to various depths depending upon the
21 particular composition of the ground material encountered. Appellant
22 spent about \$15,600 to clean up the oil.

23 III

24 Because it did not believe that oil had entered state waters,
25 appellant did not notify respondent about the foregoing occurrence.
26 Respondent first learned of the discharge on May 19, 1979 when the

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1 U.S. Coast Guard reported the event to respondent. Respondent's
2 inspector visited the facility and observed oil and water in some
3 holes on the ground and also saw some empty holes. The inspector
4 suggested that the surface be flushed with water to collect more
5 of the spill, and the liquid collected in a trench at the south end
6 of the facility.

7 On May 24, 1978, respondent's inspectors returned to the facility and
8 again observed oil and water in some holes. Samples taken
9 showed a characteristic odor similar to the product which had been
10 discharged.

11 On June 14, 1978, a hole in the path of the spill was successfully
12 dug to a depth of five feet. At a depth of three feet, a vein of liquid
was pierced. At a foot deeper, a liquid, composed of oil and water,
14 collected. The liquid was dark but retained the characteristic smell
15 of the product spilled, i.e., "Av jet A" fuel.

16 IV

17 Based upon its inspections, the department determined that oil
18 reached waters of the state. The department determined, under the
19 circumstances of the discharge, a civil penalty of \$5,000.00 should be
20 assessed. An application for relief from the penalty was filed by
21 appellant and denied by respondent, which resulted in the instant appeal.

22 V

23 Oil reached underground water. Oil was not shown to
24 have reached the water table, which fluctuates with the tide, at any
25 time here relevant. Oil was not sighted on the shorelines of the
Duwamish River, located about 200 yards from the facility. Appellant's

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1 facility is located upon lands approximately 200 yards from the seacoast
2 of the state.

3 VI

4 Any Conclusion of Law which should be deemed a Finding of Fact
5 is hereby adopted as such.

6 From these Findings, the Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 The only issue submitted to the Board is whether appellant caused
10 or permitted oil to enter "waters of the state."

11 RCW 90.48.315(10) defines "waters of the state" to include
12 "underground water . . . tidal flats, beaches, and lands adjoining
13 the seacoast of the state." "Underground water" is not further defined in
14 chapter 90.48 RCW. However, RCW 90.44.035 does define "ground waters" as
15 all waters existing beneath the land surface, whatever the geological
16 formation or structure in which such water stands or flows, percolates or
17 otherwise moves.

18 RCW 90.4.8.320 makes unlawful the entry of oil into waters of the
19 state from any fixed facility or installation regardless of the
20 cause or fault of the person having control over the oil, with certain
21 exceptions not here relevant.

22 RCW 90.48.360 creates a duty for any person discharging or
23 allowing oil to enter the waters of the state without prior
24 authorization, to immediately notify respondent of such discharge
25 or entry.

26 RCW 90.48.350 provides for a penalty of up to \$20,000.00 for

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1 every intentional or negligent discharge or entry of oil into waters
2 of the state.

3 II

4 Appellant did not notify respondent of its discharge of oil
5 into waters of the state as required by RCW 90.48.360.

6 III

7 Appellant negligently permitted a discharge of oil into "waters
8 of the state", i.e., "underground water" or "lands adjoining the seacoast
9 of the state" as alleged, for which a \$5,000.00 penalty was proper.

10 IV

11 Any Finding of Fact which should be deemed a Conclusion of Law
12 is hereby adopted as such.

From these Conclusions the Board enters this

14 ORDER

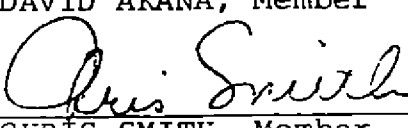
15 The \$5,000.00 penalty is affirmed.

16 DATED this 5th day of June, 1979.

17 POLLUTION CONTROL HEARINGS BOARD

18 
19 DAVE N. MOONEY, Chairman

20 
21 DAVID AKANA, Member

22 
23 CHRIS SMITH, Member

24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
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